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TRANSMITTAL FORM (to be used for all correspondence after initial filing)	Application Number	09/916,881	
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	First Named Inventor	WILCE, Scot D.	
	Art Unit	3628	
	Examiner Name	Jennifer Liversedge	
Total Number of Pages in This Submission	19	Attorney Docket Number	G08.001

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SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT			
Firm Name	Buckley, Maschoff & Talwalkar LLC		
Signature	<i>Patrick Buckley</i>		
Printed name	Patrick J. Buckley		
Date	December 11, 2006	Reg. No.	40,928

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Patent

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: WILCE et al.

Application No.: 09/916,881

Filing Date: 7/27/2001

For: SYSTEMS AND METHODS FOR
FACILITATING AGREEMENT
DEFINITION VIA AN
AGREEMENT MODELING
SYSTEM

) Confirmation No.: 8938

) Group Art Unit: 3628

) Examiner: Jennifer Liversedge

) **APPEAL BRIEF**

) Attorney Docket No.: G08.001

) **PTO Customer Number 28062**

) Buckley, Maschoff & Talwalkar LLC

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) New Canaan, CT 06840

CERTIFICATE OF MAILING UNDER 37 CFR 1.8

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Mail Stop Appeal Brief - Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on December 11, 2006.

Dated: December 11, 2006 By: 

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Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
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Sir:

Applicants hereby submit an appeal to the Board of Patent Appeals and Interferences from the decision of the Examiner in the Final Office Action mailed July 11, 2006 (the "Final Office Action") rejecting claims 1-13, 15-16, 18, 37-45.

12/18/2006 HVUONG1 00000042 09916881

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REAL PARTY IN INTEREST

The present application is assigned to GOLDMAN, SACHS & CO., 85 Broad Street, New York, New York 10004, U.S.A.

RELATED APPEALS AND INTERFERENCES

No other appeals or interferences are known to Applicants or Applicants' legal representative which will directly affect, be directly affected by, or have a bearing on the Board's decision in the pending appeal. The present application has not been assigned to any other party.

STATUS OF CLAIMS

Claims 14, 17, and 19-36 have been canceled.

Claims 1-13, 15-16, 18, and 37-45 are being appealed.

STATUS OF AMENDMENTS

No amendments have been filed subsequent to the Final Office Action.

SUMMARY OF THE CLAIMED SUBJECT MATTER

Some of the claimed embodiments are directed to a method of facilitating definition of a transaction agreement associated with a plurality of different product types. See, in general, Specification at FIG. 9 and page 17, line 2 to page 23, line 3. In particular, claim 1 recites “automatically determining an agreement type based on the plurality of product types and a covered products matrix, wherein the covered products matrix includes a plurality of covered

product types and, for each covered product type, a plurality of transaction instruments.” For example, FIG. 15 of the present application illustrates a transaction associated with a plurality of product types that include (1) silver and (2) gold. Moreover, FIG. 15 illustrates a covered-products matrix with multiple transaction instruments for each covered product type that was automatically determined for (1) silver swaps and (2) buy/sell options for gold (*e.g.*, and a particular agreement type may be determined as appropriate for this situation). See also FIG. 14 and Specification at page 27, line 16 to page 28, line 20.

Claim 1 further recites “determining, in accordance with the agreement type, an agreement term between a party and a counter-party.” For example, a particular agreement term between a party and a counter-party might be determined as appropriate in accordance with the agreement type(s) defined in FIG. 15. See also FIG. 14 and Specification at page 28, line 21 to page 29, line 5. That is, referring again to FIG. 15, a first agreement term might be appropriate for a gold commodity product type (because the gold commodity product type is associated with an option transaction instrument) while a second agreement term is appropriate for a silver commodity product type (because the silver commodity product type is associated with a swap transaction instrument).

Claim 16 is also directed to a method of facilitating definition of a transaction agreement associated with a plurality of different product types. In particular, claim 16 recites “determining an agreement type” and “determining an agreement term.” FIG. 17 and specification at page 31, lines 13 to 17. Moreover, claim 16 recites “generating an indication based on an evaluation of the agreement type and the agreement term.” FIG. 17 and Specification at page 31, lines 18 to 27. Claim 16 further recites “evaluating the agreement type and the agreement term based on the plurality of financial product types and a covered financial products matrix.” FIG. 17 and Specification at page 31, lines 18 to 27. Such an approach may, for example, help make sure that a particular agreement type and term and typically appropriate.

Other embodiments are directed to an apparatus for facilitating definition of a transaction agreement associated with a plurality of different product types. For example, claim 42 recites “a processor” and “a storage device in communication with said processor and storing instructions adapted to be executed by said processor to” perform a method that includes “automatically determin[ing] an agreement type based on the plurality of product types and a

covered products matrix” and “determin[ing], in accordance with the agreement type, an agreement term between a party and a counter-party.” FIG. 10 and Specification at page 23, line 5 to page 25, line 5.

Still other embodiments are directed to a medium storing instructions adapted to be executed by a processor to perform a method of facilitating definition of a transaction agreement associated with a plurality of different product types. For example, claim 45 recites a medium wherein the stored instructions result in “automatically determining an agreement type based on the plurality of product types and a covered products matrix” and “determining, in accordance with the agreement type, an agreement term between a party and a counter-party.” FIG. 10 and Specification at page 24, lines 1 to 5.

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

Claims 42-25 are rejected under 35 USC 102 as being anticipated by US Publication No. 2002/0188539 A1 (“Axelrad”).

Claims 1-3, 5-11, and 15 are rejected under 35 USC 103 as being unpatentable over Axelrad.

Claims 16, 18, and 37-41 are rejected under 35 USC 103 as being anticipated by US Publication No. 2002/0178120 A1 (“Reid”).¹

Claims 4, 12, and 13 are rejected under 35 USC 103 as being unpatentable over Axelrad in view of US Publication No. 2002/0198833 A1 (“Wohlstadter”).

ARGUMENT

Claims 42-25 are rejected under 35 USC 102 as being anticipated by Axelrad

Claim 42 is directed to an apparatus for facilitating definition of a transaction agreement associated with “a plurality of different product types.” Moreover, claim 42 recites that a processor is to perform a method that includes “automatically determin[ing] an agreement type

¹ Although the Final Office Action cites 35 USC 102 as the basis for the rejection (Final Office Action at page 8, middle of page), Applicants respectfully suggest this is a typographical error.

based on the plurality of product types and a covered products matrix.” Claim 42 further recites that the processor will “determine, in accordance with the agreement type, an agreement term between a party and a counter-party.” For example, FIG. 15 of the present application illustrates a covered product matrix that may be associated with gold and silver commodity product types.

According to the Final Office Action, Axelrad discloses such a covered products matrix at paragraphs [0052] through [0054]. Applicants respectfully disagree. This portion of Axelrad merely discloses that an agreement may be generated for a user based on his or her answers to a series of questions (*e.g.*, indicating whether the user is an individual or corporation) and a selected fund type. Nothing in Axelrad discloses a covered products matrix as recited in claim 42. Nor would such a feature be obvious in view of Axelrad.

Claims 1-3, 5-11, and 15 are rejected under 35 USC 103 as being unpatentable over Axelrad

Claim 1 recites “automatically determining an agreement type based on the plurality of product types and a covered products matrix, wherein the covered products matrix includes a plurality of covered product types and, for each covered product type, a plurality of transaction instruments.” For example, FIG. 15 of the present application illustrates a plurality of product types that include (1) silver and (2) gold. Moreover, FIG. 15 illustrates a covered-products matrix with multiple transaction instruments for each covered product type, namely (1) silver swaps and (2) buy/sell options for gold (*e.g.*, and a particular agreement type may be determined as appropriate for this situation).

Claim 1 further recites “determining, in accordance with the agreement type, an agreement term between a party and a counter-party.” For example, referring again to FIG. 15, a first agreement term might be appropriate for a gold commodity product type (because the gold commodity product type is associated with an option transaction instrument) while a second agreement term is appropriate for a silver commodity product type (because the silver commodity product type is associated with a swap transaction instrument).

Nothing in Axelrad discloses or suggests such a feature. According to the Final Office Action, Axelrad does not disclose a plurality of transaction instruments for each product type but:

it would have been obvious... that as Axelrad discloses a plurality of covered product types, that the variety could include a variety of transaction instruments. Axelrad discloses where users select fund from fund firms, fund families within each fund firm, and specific funds within each fund family.... [I]t would be obvious ... that the same process and method could be incorporate[d] for any type of financial instruments in which users select from choices available for any variety offered by a sponsoring organization.

Final Office Action, at page 5, middle of page.

In rejecting claims under 35 U.S.C. § 103, the Examiner bears the initial burden of presenting a *prima facie* case of obviousness. See In re Rijckaert, 9 F.3d 1531,1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993). A *prima facie* case of obviousness is established by presenting evidence that would have led one of ordinary skill in the art to arrive at the claimed invention. See In re Fine, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). Evidence of a suggestion, teaching, or motivation to modify a reference may flow from the prior art references themselves, the knowledge of one of ordinary skill in the art, or, in some cases, from the nature of the problem to be solved, see Pro-Mold & Tool Co. v. Great Lakes Plastics, Inc., 75 F.3d 1568, 1573, 37 USPQ2d 1626, 1630 (Fed. Cir. 1996), although “the suggestion more often comes from the teachings of the pertinent references,” In re Rouffet, 149 F.3d 1350, 1355, 47 USPQ2d 1453, 1456 (Fed. Cir.1998). The range of sources available, however, does not diminish the requirement for actual evidence. That is, the showing must be clear and particular. See, e.g., C.R.Bard Inc. v. M3 Sys., Inc., 157 F.3d 1340, 1352, 48 USPQ2d 1225, 1232 (Fed. Cir.1998), cert. denied, 119 S. Ct. 1804 (1999). A broad conclusory statement regarding the obviousness of modifying a reference, standing alone, is not evidence. Thus, when an Examiner relies on general knowledge to negate patentability, that knowledge must be articulated and placed on the record. See In re Lee, 277 F.3d 1338, 1342-45, 61 USPQ2d 1430, 1433-35 (Fed. Cir. 2002).

In the present case, there is simply no convincing argument that would lead to the conclusion that one of ordinary skill in the art would have been motivated to modify the reference in the way suggested by the Examiner.

The teaching or suggestion to make the claimed combination must be found in the prior art, and not based on the Applicants’ disclosure. In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). “To support the conclusion that the claimed invention is directed to obvious

subject matter, either the references must expressly or impliedly suggest the claimed invention or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references.” Ex parte Clapp, 227 USPQ 972, 973 (Bd. Pat. App. & Inter. 1985). The fact that references can potentially be modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. MPEP 2143.01; In re Mills, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990); Monarch Knitting Machinery Corp. v. Sulzer Morat GmbH, 45 USPQ 2d 1977, 1981-82 (Fed. Cir. 1998) (the question to be asked is “whether the prior art contains a suggestion or motivation to combine references”).

The absence of any motivation in the prior art (and the lack of a convincing line of reasoning) to modify the reference in the ways recited in these claims indicates that the Examiner has simply used the present invention as a motivation to modify the reference – the essence of impermissible hindsight reconstruction.

Because there is no teaching or suggestion to modify the reference in this way, a *prima facie* case of obviousness has not been established. The rejection of these claims should be reversed.

Claims 16, 18, and 37-41 are rejected under 35 USC 102 as being anticipated by Reid²

Claim 16 is directed to a method of facilitating definition of a transaction agreement associated with a plurality of different product types. In particular, claim 16 recites “determining an agreement type” and “determining an agreement term.” FIG. 17 and specification at page 31, lines 13 to 17. Moreover, claim 16 recites “generating an indication based on an evaluation of the agreement type and the agreement term.” FIG. 17 and Specification at page 31, lines 18 to 27. Claim 16 further recites “evaluating the agreement type and the agreement term based on the plurality of financial product types and a covered financial products matrix.” FIG. 17 and Specification at page 31, lines 18 to 27. Such an approach may, for example, help make sure that a particular agreement type and term and typically appropriate.

² Although the Final Office Action cites 35 USC 102 as the basis for the rejection (Final Office Action at page 8, middle of page), Applicants respectfully suggest this is a typographical error.

According to the Final Office Action, Reid does not disclose a plurality of different financial product types or evaluating the agreement type and the agreement term based on the product types and a covered financial products matrix. Final Office Action at page 8, last partial paragraph. However, according to the Final Office Action Reid:

discloses where the contract agreement system can be used for all types of goods and services ... and where a plurality of choices may be presented through sub-divisions of fields through drop down lists.... It would be obvious ... to include the use of a variety of financial products [as] desired to be bought, sold and traded and agreement contracts are required for such a transaction.

Final Office Action, at page 9, top of page.

In the present case, there is simply no convincing argument that would lead to the conclusion that one of ordinary skill in the art would have been motivated to modify the reference in the way suggested by the Examiner.

The absence of any motivation in the prior art (and the lack of a convincing line of reasoning) to modify the reference in the ways recited in these claims indicates that the Examiner has simply used the present invention as a motivation to modify the reference – the essence of impermissible hindsight reconstruction. Because there is no teaching or suggestion to modify the reference in this way, a *prima facie* case of obviousness has not been established. The rejection of these claims should be reversed.

Claims 4, 12, and 13 are rejected under 35 USC 103 as being unpatentable over Axelrad in view of Wohlstadter

These claims depend from claim 1 and should be allowable at least for the reasons set forth above with respect to claim 1.

CONCLUSION

Applicants respectfully suggest that rejections of claims 1-13, 15-16, 18, and 37-45 are improper and request that the rejections be reversed. If any issues remain, or if the Examiner has

any further suggestions for expediting allowance of the present application, the Examiner is kindly invited to contact the undersigned.

Respectfully submitted,



December 11, 2006
Date

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Appendix A - Claims
Appendix B - Evidence
Appendix C - Related Proceedings

APPENDIX A - CLAIMS

This is a complete copy of the claims involved in the appeal:

1. A method for facilitating definition of a transaction agreement associated with a plurality of different product types, comprising:

automatically determining an agreement type based on the plurality of product types and a covered products matrix, wherein the covered products matrix includes a plurality of covered product types and, for each covered product type, a plurality of transaction instruments; and

determining, in accordance with the agreement type, an agreement term between a party and a counter-party.

2. The method of claim 1, wherein the covered products matrix is associated with at least one of: (i) a plurality of covered product types, or (ii) a plurality of transaction instruments.

3. The method of claim 2, wherein at least one covered product type comprises: (i) an equity product, (ii) a stock product, (iii) an index product, (iv) a fixed income product, (v) a bond product, (vi) a bank loan product, (vii) a whole loan product, (viii) an interest rate product, (ix) a credit derivative product, (x) a commodity product, (xi) a metal product, (xii) a energy product, or (xiii) an agriculture product.

4. The method of claim 2, wherein at least one transaction instrument comprises: (i) a swap instrument, (ii) an option instrument, (iii) a buy instrument, (iv) a sell instrument, (v) a call instrument, (vi) a put instrument, (vii) a forward instrument, (viii) a pre-paid forward instrument, (ix) a spot instrument, (x) a repurchase agreement instrument, (xi) a loan instrument, (xii) a warrant instrument, or (xiii) a contract for differences instrument.

5. The method of claim 2, wherein the covered products matrix further includes at least one of: (i) an indication of approval, (ii) an indication of disapproval, (iii) an indication of a pending status, (iv) compliance authorization information, (v) default information, (vi) party information, (vii) counter-party information, (viii) legal information, (ix) master agreement information, or (x) credit information.

6. The method of claim 1, wherein the transaction agreement is associated with at least one of: (i) a set of rights between the party and the counter-party, or (ii) a legal contract.

7. The method of claim 1, wherein the agreement type is associated with at least one of: (i) a set of rights between the party and the counter-party, (ii) a legal contract, (iii) a product type, (iv) a monetary amount, (v) a transaction instrument, (vi) the party, or (vii) the counter-party.

8. The method of claim 1, wherein the agreement term is associated with at least one of: (i) a set of rights between the party and the counter-party, (ii) a legal contract, (iii) a product type, (iv) a monetary amount, (v) a transaction instrument, (vi) the party, or (vii) the counter-party.

9. The method of claim 1, wherein said determining an agreement type comprises:
determining a general document type; and
determining a refinement to the general document type.

10. The method of claim 1, wherein said automatically determining the agreement term comprises:
defining the agreement term based on a pre-stored default transaction term.

11. The method of claim 1, wherein said automatically determining the agreement term comprises:

defining the agreement term based on information received from a user of an agreement modeling system.

12. The method of claim 1, wherein said automatically determining the agreement term comprises:

defining the agreement term based on information received from a satellite system.

13. The method of claim 1, wherein the satellite system comprises at least one of: (i) a business system, (ii) a legal system, (iii) a compliance system, (iv) a credit system, (v) a treasury system, or (vi) an operations system.

15. The method of claim 1, wherein said automatically determining the agreement term comprises:

automatically determining the agreement term based on the plurality of product types.

16. A method for facilitating definition of a transaction agreement associated with a plurality of different financial product types, comprising:

determining an agreement type;

determining an agreement term;

generating an indication based on an evaluation of the agreement type and the agreement term; and

evaluating the agreement type and the agreement term based on the plurality of financial product types and a covered financial products matrix .

18. The method of claim 16, wherein the indication is provided to at least one of: (i) a user of an agreement modeling system, or (ii) a satellite system.

37. The method of claim 16, wherein the transaction agreement is associated with at least one of: (i) a risk management transaction, (ii) an over the counter product, (iii) an equity derivative, (iv) a commodity transaction, (v) an electricity transaction, (vi) a foreign exchange transaction, (vii) a currency option, (viii) a bond option, (ix) a synthetic agreement for forward exchange, (x) a reciprocal purchase agreement, (xi) an interest rate swap, (xii) an interest rate cap, (xiii) an interest rate collar, (xiv) an interest rate floor, (xv) a forward rate agreement, (xvi) a forward rate bill agreement, or (xvii) an option to enter into an underlying interest rate swap transaction.

38. The method of claim 16, wherein the transaction agreement comprises at least one of: (i) an INTERNATIONAL SWAP DEALERS ASSOCIATION® agreement, (ii) a foreign exchange & options master agreement, (iii) an agreement associated with one or more currencies, or (iv) an agreement associated with one or more jurisdictions.

39. The method of claim 16, wherein the transaction agreement includes at least one of: (i) date information, (ii) agreement interpretation information, (iii) obligation information, (iv) representation information, (v) sub-agreement information, (vi) default event information, (vii) termination event information, (viii) transfer information, (ix) expenses information, (x) notice information, (xi) governing law information, (xii) definition information, a master agreement, (xiii) a schedule to a master agreement, or (xiv) at least one addenda to a master agreement.

40. The method of claim 16, wherein the transaction agreement is associated with at least one agreement fact, and further wherein the at least one agreement fact comprises at least one of: (i) a party identifier, (ii) a counter-party identifier, (iii) an agreement identifier, (iv) a name, (v) address information, (vi) contact information, (vii) an effective date, (viii) an

expiration date, (ix) an area of origin, (x) an indication of governing law, (xi) an area of organization, (xii) a standard industrial classification code, (xiii) a functional business area, or (xiv) beneficial ownership information.

41. The method of claim 40 , wherein the at least one agreement fact is associated with at least one of: (i) a data type, (ii) a data source, (iii) a security class, or (iv) an attribute.

42. An apparatus for facilitating definition of a transaction agreement associated with a plurality of different product types, comprising:

a processor; and

a storage device in communication with said processor and storing instructions adapted to be executed by said processor to:

automatically determine an agreement type based on the plurality of product types and a covered products matrix; and

determine, in accordance with the agreement type, an agreement term between a party and a counter-party.

43. The apparatus of claim 42, wherein said storage device further stores an agreement information database.

44. The apparatus of claim 42, further comprising:

a communication device coupled to said processor and adapted to communicate with at least one of: (i) a client device, (ii) an agreement modeling system controller, or (iii) a satellite system.

45. A medium storing instructions adapted to be executed by a processor to perform a method of facilitating definition of a transaction agreement associated with a plurality of different product types, said method comprising:

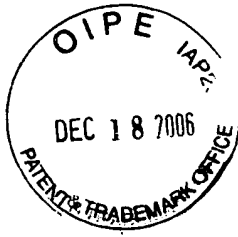
automatically determining an agreement type based on the plurality of product types and a covered products matrix; and

determining, in accordance with the agreement type, an agreement term between a party and a counter-party.



APPENDIX B - EVIDENCE

No evidence is submitted herewith (*i.e.*, this appendix is empty).



APPENDIX C - RELATED PROCEEDINGS

No other appeals or interferences are known to Applicants or Applicants' legal representative which will directly affect, be directly affected by, or have a bearing on the Board's decision in the pending appeal. The present application has not been assigned to any other party.

Therefore, there are no copies of decisions rendered by a court or the Board to attach (*i.e.*, this appendix is empty).